STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD KEITH ABBOTT,

Defendant-Appellant.

UNPUBLISHED
September 25, 2003

No. 237084
Genesee Circuit Court
LC No. 01-007714-FC

Before: Murphy, P.J., and Cooper and C. L. Levin*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), and assault with intent to do great bodily harm less than murder, MCL 750.84. He was sentenced to concurrent prison terms of life without parole for the murder conviction and 114 to 240 months for the assault conviction. He appeals as of right. We affirm.

I. Facts

Defendant was convicted of brutally murdering his girlfriend, Denise Goddard, and assaulting her friend, Jaynne Reagor, during the early morning of December 20, 2000. Ms. Reagor testified that Ms. Goddard came over to her house twice that morning. She stated that Ms. Goddard was acting nervous and asked to use the phone. When Ms. Goddard returned the second time that morning the two spoke outside the house. At that time, Ms. Reagor observed defendant walk up to the house and begin to argue with Ms. Goddard. When Ms. Reagor attempted to intercede, defendant hit Ms. Reagor twice in the back of the head. As a result, Ms. Goddard fell against the chimney, hit the storm door of her house, and then fell to the ground. Ms. Reagor recalled that Ms. Goddard went inside the house when this assault occurred and that defendant followed her yelling, "I'm going to prison now. You're dead bitch." Ms. Reagor then heard breaking glass and yelling from inside the house. She further testified that when defendant finally exited the house, he stepped over her body and walked away. After defendant left, Ms. Reagor crawled back into the house and waited until help arrived.

When the police responded to the scene they discovered Ms. Reagor, who was semi-conscious, in the kitchen and the body of Ms. Goddard in the living room. Ms. Goddard was dead. The house was strewn with broken glass, overturned furniture and blood. Several knives,

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

dinner forks and scissors were also found throughout the house with blood and hair on them. There was also a broken cement statute located by Ms. Goddard's head with blood on it. One police officer likened the scene to something out of the movie *Helter Skelter*. Ms. Reagor was ultimately taken to the hospital. A portion of her ear was missing and she was also treated for a head injury. An autopsy report later revealed that Ms. Goddard suffered a total of seventy-five wounds, forty-four of which were stab wounds from various objects and blunt force trauma to her head.

II. Sufficiency of the Evidence

On appeal, defendant challenges the sufficiency of the evidence supporting his convictions for first-degree premeditated murder and assault with intent to do great bodily harm less than murder. In sufficiency of the evidence claims, this Court reviews the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.[1] "[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime."[2] This Court will not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses.[3]

A. First-Degree Premeditated Murder

This Court is first asked to determine whether a rational finder of fact could conclude from the facts in this case that defendant's actions were premeditated and deliberate. Defendant alleges that he did not have the ability to properly reflect on his actions after announcing his intent to kill Ms. Goddard by saying "I'm going to prison now. You're dead bitch[,]" and then following her into the house, stabbing her forty-four times with various objects, and striking her on the head with a cement statute. We find that such overwhelming evidence is more than sufficient to conclude that there is no merit to defendant's claim.

First-degree premeditated murder is a specific intent crime and requires the prosecution to establish that "the defendant killed the victim and that the killing was . . . 'willful, deliberate, and premeditated . . . .'"[4] Premeditation means that a person was able to think about an action beforehand.[5] But deliberation requires a person to measure and evaluate the major facets of a

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[1] *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

[2] *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

[3] *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

[4] *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002), quoting MCL 750.316(1)(a).

[5] *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998), citing *People v Morrin*, 31 Mich App 301, 329-331; 187 NW2d 434 (1971).

problem or choice.[6] Both require sufficient time to allow the defendant to take a second look.[7] Circumstantial evidence may constitute sufficient proof of premeditation and deliberation.[8]

Defendant argues that the circumstances in this case are inconsistent with the idea of premeditated, deliberated, or cold-blooded murder. Rather, he maintains that he simply "lost it" because he had been drinking and arguing with Ms. Goddard. There are several factors to consider when establishing whether premeditation existed, including:

> (1) the previous relationship between the defendant and the victim; (2) the defendant's actions before and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted. Premeditation and deliberation may be inferred from all the facts and circumstances, but the inferences must have support in the record and cannot be arrived at by mere speculation.[9]

Where there is a fight and a subsequent killing, in order to establish first-degree premeditated murder there must be some showing that the killer's thought process was undisturbed by hot blood.[10]

In the present case, the prosecution presented evidence that defendant and Ms. Goddard had an argumentative and sometimes volatile history. Indeed, there was testimony that defendant struck Ms. Goddard in the past and threatened to kill her. On the night in question, the evidence shows that defendant was looking for Ms. Goddard. There was also testimony that Ms. Goddard was nervous and afraid that defendant was angry with her.

More compelling, however, is the fact that defendant *walked* over to Ms. Reagor's residence and actually announced his intent to kill Ms. Goddard. He announced this intention after assaulting Ms. Reagor and proceeded to follow Ms. Goddard into the house. Further proof that defendant premeditated and deliberated his actions lies in the forty-four stab wounds he inflicted on Ms. Goddard, the vast majority of which were located on her upper body. These wounds were caused by various instruments, including dinner forks, scissors, and knives. He also struck Ms. Goddard in the head with a cement statute. Additionally, there were abrasions discovered on Ms. Goddard's arms and hands that testimony established indicated that she was in a defensive position. The nature of the killing and the evidence of Ms. Goddard's defensive posture provide support for a finding that defendant had time to take a "second look."[11] It was for the jury to decide whether defendant acted with premeditation and deliberation.

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[6] *Plummer, supra* at 300.

[7] *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998).

[8] *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

[9] *Plummer, supra* at 300-301 (citations omitted).

[10] *Id*. at 301.

[11] See *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999); *Kelly, supra* at 642; *People*
(continued…)

B. Assault With Intent To Do Great Bodily Harm

We similarly find no merit to defendant's claim that there was insufficient evidence to support his assault conviction. To convict defendant of this charge, the prosecution needed to establish the following beyond a reasonable doubt: "(1) an assault, i.e., 'an attempt or offer with force and violence to do [a] corporal hurt to another' coupled with (2) a specific intent to do great bodily harm less than murder."[12] Assault with intent to do great bodily harm is a specific intent crime.[13] A defendant's intent may be inferred from his conduct, and from all the facts and circumstances surrounding the crime.[14]

Viewing the evidence in the light most favorable to the prosecution, we believe that a rational finder of fact could conclude that defendant assaulted Ms. Reagor with the requisite intent. Defendant struck Ms. Reagor twice in the head when she attempted to intervene in his argument with Ms. Goddard. As a result, Ms. Reagor fell against a chimney and then against the storm door, before falling to the ground. She claimed that she was unable to stand after the incident and had to crawl into the house. Ms. Reagor lost a portion of one ear and suffered a head injury as a result of the assault. Notably, when defendant left he stepped over Ms. Reagor's body, leaving her bleeding outside in the cold.

III. Admission of Evidence

Defendant next argues that the trial court erroneously admitted a statement that he made to his parole officer. He contends that the statement was inadmissible because it was made during custodial questioning without the benefit of *Miranda*[15] warnings. We disagree. A trial court's findings of fact on a motion to suppress are reviewed for clear error on appeal.[16] "To the extent that a trial court's ruling on a motion to suppress involves an interpretation of the law or the application of a constitutional standard to uncontested facts, our review is de novo."[17] Clear error exists if this Court is left with a definite and firm conviction that a mistake has been made.[18]

The record shows that defendant's parole officer arrived at the jail to charge defendant with violation of his parole and that she simply expressed her disbelief in defendant's actions as he came into the visiting room. It is apparent that defendant's statements that he "lost it" and

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(…continued)

v Coddington, 188 Mich App 584, 600; 470 NW2d 478 (1991).

[12] *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996), quoting *People v Smith*, 217 Mich 669, 673; 187 NW 304 (1922).

[13] *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997).

[14] *Id.*; *People v Lugo*, 214 Mich App 699, 709-710; 542 NW2d 921 (1995).

[15] *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[16] *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001).

[17] *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

[18] *People v McElhaney*, 215 Mich App 269, 273; 545 NW2d 18 (1996).

killed Ms. Goddard were volunteered and not made pursuant to questioning intended to elicit an incriminating response.[19] *Miranda* warnings were not required in this instance.[20]

IV. Witnesses

Defendant also contends that the trial court abused its discretion when it allowed the prosecutor to add two witnesses to the witness list just before trial. The record shows that the prosecutor informed defense counsel of his intent to call these witnesses as soon as possible after they were discovered, that defense counsel was given ample opportunity to interview the witnesses, and that counsel conducted a thorough cross examination. Defendant has failed to make any showing of prejudice. Indeed, the testimony of one of the two witnesses tended to support the defense that the defendant acted in hot blood.

V. Use of Restraints

Defendant further asserts that he was denied a fair trial because he was required to appear before the jury in manacles and leg shackles. Because defense counsel failed to object at trial this issue is not properly preserved for appellate review.[21] Further, there is nothing in the record to support a finding of prejudice in this regard. The record demonstrates, to the contrary, that defendant assured the trial court that he was able to walk slowly without drawing the jury's attention to the fact that he was wearing a leg brace *without chains or shackles*.

VI. Prosecutorial Misconduct

Defendant raises several instances of alleged prosecutorial misconduct that he believes denied him a fair trial. We disagree. Prosecutorial misconduct claims are reviewed case by case, examining any remarks in context, to determine if the defendant received a fair and impartial trial.[22] Because defendant failed to object to this alleged misconduct, our review is limited to plain error affecting his substantial rights.[23] "No error requiring reversal will be found if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction."[24]

Defendant asserts that the prosecutor improperly informed the jury during opening statements that defendant's parole officer visited defendant in jail, and that Marc McCarty shared a jail cell with defendant. He claims that such commentary improperly emphasized his parole status and incarceration. It is apparent, however, that the prosecutor made these remarks to explain the circumstances surrounding defendant's statements to these witnesses. The prosecutor

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[19] See *People v Raper*, 222 Mich App 475, 479-480; 563 NW2d 709 (1997).

[20] See *id*. at 480-481.

[21] See *People v Solomon (Amended Opinion)*, 220 Mich App 527, 532; 560 NW2d 651 (1996).

[22] *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001).

[23] *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

[24] *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

did not unduly dwell on defendant's parole status and incarceration. Accordingly, the prosecutor's conduct did not constitute plain error.

To the extent defendant claims error regarding the prosecutor's questioning of Andrea Parkin, we again disagree. The challenged question was relevant to show the nature of the relationship between defendant and Ms. Goddard. We further find that Ms. Parkin's testimony concerning defendant's arrest on an unrelated matter was unresponsive to the prosecutor's otherwise proper question concerning whether defendant had any contact with his child.[25]

VII. Cumulative Error

Because we found no errors of consequence, which combined to deprive defendant of a fair trial, the cumulative error doctrine is inapplicable.[26]

Affirmed.

/s/ William B. Murphy
/s/ Jessica R. Cooper
/s/ Charles L. Levin

[25] See *People v Griffin*, 235 Mich App 27, 36-37; 597 NW2d 176 (1999).

[26] *People v Cooper*, 236 Mich App 643, 659-660; 601 NW2d 409 (1999).